

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 3:05-cr-147-A
	)	
DANNY JOE McCART	)	

**SENTENCING MEMORANDUM**

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and in response to the Motion for Downward Departure for Diminished Mental Capacity, the following is submitted:

1) Danny Joe McCart was charged in a one count indictment with possession of seven firearms after having been convicted of two felony offenses in violation of Title 18, United States Code, Section 922(g)(1).

2) Defendant McCart entered a plea of guilty to the offense on December 2, 2005, just prior to his trial date of December 5, 2005.

3) This case was scheduled for sentencing on March 9, 2006, but was continued to give the Court and the United States the opportunity to evaluate the motion for departure.

4) Defendant McCart was evaluated by Dr. Theron M. Covin and a Neurobehavioral Health Evaluation was filed with the Court. The evaluation concludes that McCart is cognitively impaired and is currently functioning within the mild retardation range.

5) The motion for downward departure stresses that McCart's intellectual disabilities have compromised his judgment, reasoning, and ability to make good decisions.

6) The United States submits that the decision to grant a downward departure is to be

determined by the provisions of U.S.S.G. § 5K2.13. Specifically, the Defendant may be granted a downward departure if the Defendant committed the offense while suffering from a significantly reduced mental capacity, and the significantly reduced mental capacity contributed substantially to the commission of the offense. The United States has seen nothing in the evaluation of McCart to suggest that his illegal possession of firearms was a result of his impairment or retardation.

Wherefore, premises considered, the United States submits that the motion for downward departure is due to be denied.

Respectfully submitted this the 13<sup>th</sup> day of March, 2006.

LEURA G. CANARY  
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:  
  
Christine Freeman.

Respectfully submitted,

LEURA G. CANARY  
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